

## **REMARKS**

The above amendments and these remarks are responsive to the Office action dated March 22, 2006, and are being filed under 37 C.F.R. § 1.111. Claims 1, 3, 4, 9-14, and 31-33 are pending in the application. In the Office action, the Examiner rejected each of the claims as being obvious under 35 U.S.C. § 103(a). In particular, the Examiner rejected:

- Claims 1, 3, 4, 12-14, and 31-33 over U.S. Patent No. 6,592,578 to Henniges et al. ("Henniges");
- Claims 9 and 10 over Henniges in view of U.S. Patent No. 4,565,193 to Streli ("Streli"); and
- Claim 11 over Henniges in view of U.S. Patent No. 6,623,486 to Weaver et al. ("Weaver").

Applicants traverse the rejections, contending that the rejected claims are not obvious. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicants would like to patent now, applicants have (1) amended claims 3, 9-14, and 31-33; (2) canceled claims 1 and 4, without prejudice; and (3) added new claims 34 and 35. Applicants reserve the right to prosecute any of the amended and canceled claims, in original or distinctly amended form, at a later time. Furthermore, applicants have presented arguments showing that claims 3, 9-14, and 31-35 are not obvious over the cited references. Accordingly, applicants respectfully request reconsideration of the rejected claims, and prompt issuance of a Notice of Allowability.

**I. Claim Amendments**

The present communication adds new claims 34 and 35. Exemplary support for the new claims is shown, without limitation, in the following table:

New Claim	Support
34 (Independent)	Claim 1; page 12, lines 3 and 4; Figures 1-48
35	Page 26, lines 6-8

**II. Claim Rejections – 35 U.S.C. § 103**

The Examiner rejected each of the pending claims as being obvious over Henniges alone (claims 1, 3, 4, 12-14, and 31-33) or further in view of Streli (claims 9 and 10) or Weaver (claim 11). Applicants traverse the rejection, contending that none of the cited references, taken alone or in combination, teaches or suggests all the limitations of the pending claims. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicants would like to patent now, applicants have canceled independent claim 1 (and dependent claim 4) and added a new independent claim, namely, claim 34. In addition, applicants have amended each of the other remaining claims to depend from new claim 34. The claims are patentable over the cited references for the reasons set forth below.

**A. Claim 34**

New independent claim 34 is directed to a set for bone fixation, as follows:

34. (New) A set for bone fixation, comprising:

at least three bone plates having different shapes, at least a pair of the bone plates being configured to be secured to the same left or right half of a skeleton and including the same color and at least one other of the bone plates being configured to be secured to the other half of a skeleton and including a distinct color, thereby providing a two-color system for distinguishing left bone plates from right bone plates.

None of the cited references, taken alone or in combination, teaches or suggests every element of new claim 34. For example, none of the cited references teaches or suggests the recited two-color system for distinguishing left bone plates from right bone plates.

*B. Henniges, Streli, and Weaver*

The Examiner rejected the claims over Henniges alone or in combination with Streli or Weaver.

In the Office action, the Examiner stated that “Henniges et al. teach the claimed invention except for the distinct color indicating a left or right half of the skeleton” (emphasis added by applicants). The Examiner then proceeded to assert “it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate a color coded method for identifying [ ] each plate as taught by Henniges et al. in order to minimize confusion during a surgical procedure.”

Applicants disagree. Applicants believe that it would not have been obvious to modify the color-based method of Henniges for plate identification to create the set of bone plates of the claimed invention, because Henniges teaches away from a set of bone plates with the two-color system recited by claim 34. The section of Henniges related to color coding (col. 6, lines 45-55) is reproduced here:

It is an additional feature of the present invention, to color code the plates 10 for easy identification during a surgical procedure. Currently there is no easy way to identify the plates 10 in order to minimize confusion. The plates 10 can come in several different sizes and shapes depending on the specific application. By manufacturing the plates 10 with a unique color associated with each unique shape and size, confusion will be minimized and time will be saved. The color-coding will allow a doctor or nurse to identify and request the specific plate 10 and to better locate and implant screws and plates in vivo.

In other words, Henniges teaches that each unique plate (i.e., with a unique shape/size) should have its own unique color to allow the various unique plates to be distinguished from one another, to minimize confusion and save time. However, claim 34 recites a pair of plates including the same color and having different shapes. Henniges thus teaches away from the set of bone plates of claim 34, because Henniges suggests that different plates including the same color would create confusion and waste time. Therefore, it would not have been obvious to modify Henniges to achieve the invention of claim 34.

Streli also does not teach or suggest the recited two-color system for distinguishing left bone plates from right bone plates. In particular, Streli relates to pronged bone plates and includes no disclosure related to any use of color.

Weaver also does not teach or suggest the recited two-color system for distinguishing left bone plates from right bone plates. In particular, Weaver relates to a bone plating system with locking and non-locking holes and screws and includes no disclosure related to any use of color.

In summary, none of the cited references, either alone or in combination, teaches or suggests every element of claim 34. Claim 34 thus should be allowed. Claims 3, 9-14, 31-33, and 35, which depend from claim 34, also should be allowed for at least the same reasons as claim 34.

### **III. Conclusion**

Applicants believe that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that the Examiner issue a Notice of Allowability covering the pending claims. If the

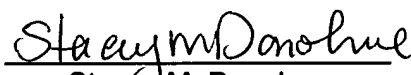
Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact Stan Hollenberg (Reg. No. 47,658) or the undersigned attorney of record, both at 503-224-6655.

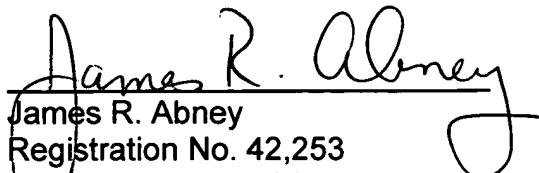
Respectfully submitted,

KOLISCH HARTWELL, P.C.

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on June 22, 2006.

  
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